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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,997	09/11/2003	Carl E. Linton	32724-703.201	8998

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WILSON, SONSINI, GOODRICH & ROSATI
650 PAGE MILL ROAD
PALO ALTO, CA 94304-1050

EXAMINER

FLETCHER, JERRY-DARYL

ART UNIT	PAPER NUMBER
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3715

MAIL DATE	DELIVERY MODE
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03/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/659,997		LINTON, CARL E.	
	Examiner		Art Unit	
	JERRY-DARYL FLETCHER		3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/13/2008, 12/18/2009</u> . | 6) <input type="checkbox"/> Other: _____. |

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DETAILED ACTION

1. This is a **FINAL OFFICE ACTION** in response to communications received on 12/18/2009. Claims 1-39 are pending in the application and are addressed below.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 6-10, and 15-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant's Admitted Prior Art ("AAPA" as evidenced by "Introducing the CVAC Process", Item #5 of IDS filed 12/10/2003; Applicant's Remarks, 03/03/2008; Reid, W., "Device Enhances Performances for Local Athletes," Item #2 of IDS filed 04/08/2006; "Introducing CVAC", Item #4 of IDS filed 12/10/2003) in view of Butler (US Patent Application Publication 2004/0261796).

Re Claim 1: The AAPA discloses a pressure vessel capable of being opened to receive a user and closed to create a hermetic seal ("Introducing the CVAC Process: What is CVAC", Item #5 of IDS filed 12/10/2003), the pressure vessel comprising an on-board interface capable of enabling a user to control one or more functions of the pressure vessel unit, a pressure transducer capable of monitoring air pressure inside the pressure vessel, a blower capable of removing air from the pressure vessel, and a

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proportioning valve capable of controlling the amount of air allowed to enter into the pressure vessel (Applicant's Remarks, 03/03/2008, Page 12).

Note that while the references do not specifically include the term "hermetic seal," it is inherent of a pressure vessel that controls pressure to include a hermetic seal; without a hermetic seal, air pressure cannot be controlled.

However, the AAPA does not specifically disclose a user sensor capable of measuring one or more parameters of a user's body condition.

Butler discloses a user sensor capable of measuring one or more parameters of a user's body condition (Paragraphs 111, 123).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a user sensor capable of measuring one or more parameters of a user's body condition, thereby providing an operator or operating device with updated details of the user's body condition.

Re Claim 6: The AAPA does not specifically disclose an external controller placed in electrical communication with the system to initiate a session.

Butler discloses electronic controls and external controller placed in electrical communication with the system to initiate sessions (Fig. 7; Paragraphs 114-122).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an external controller placed in electrical communication with the system to initiate sessions, thereby providing an operator control of the system.

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Re Claim 7-9: The AAPA does not specifically disclose the user sensor placed in electrical communication with the external controller, the external controller being capable of monitoring readings from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a selection or modification of a predetermined program regulating cyclic variations in altitude conditioning.

Butler discloses the user sensor placed in electrical communication with the external controller for selection and modification programs based on measured parameters (Paragraphs 111, 123, 129, 114-120).

It would have been obvious to one of ordinary skill in the art to have the user sensor placed in electrical communication with the external controller, the external controller being capable of monitoring readings from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a modification of a predetermined program regulating cyclic variations in altitude conditioning, thereby providing conditioning that takes into account user safety and desired goals.

Re Claim 10: Note that claim 10 includes the pressure vessel of claim 1, and additionally a kiosk controller and a master controller.

The AAPA does not specifically disclose a kiosk controller and a master controller.

Butler discloses that a network of local and remote computer systems are coupled to the pressure vessel system (controls, sensors, interface), running programs to control the operation of the vessel, and to store and retrieve information regarding the programs and profiles to be run on the system, as well as information regarding users of the vessel (Paragraphs 118-121).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a kiosk controller and a master controller comprising first and second software programs, and information processing systems for executing the programs, such that the controllers are able to control the pressure vessel system with a series of programs adaptive to various situations and parameters.

Re Claims 15-20: Note that claims 15-20, dependent on claim 10, include limitations also found in claims 6-9, dependent on claim 1, except that claims 15-20 relate to the kiosk controller (instead of an "external controller"). Also with regard to claims 19 and 20, it is claimed that the information processing system, instead of the external controller, is capable of performing the tasks as described in claims 7-9. It is claimed in claim 10 that the information processing system is included in the kiosk controller. Claims 6-9 have each been discussed above. It has been discussed in regard to claim 10 that the kiosk controller is coupled to the sensors and measurement devices and controls the operation of the pressure vessel.

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Re Claims 21-22: The AAPA does not specifically disclose the master controller located in a separate facility and is capable of storing user data entered into the kiosk controller or on-board interface.

Butler discloses a storage and retrieval system of user data including both local and remote systems, that databases may be local or through the Internet (Paragraphs 120-121).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to store user data entered in a kiosk in a controller located in a separate facility, thereby providing storage of information that may be accessed abroad.

Re Claim 23: The AAPA discloses that multiple pressure vessels may be used (Reid, W., "Device Enhances Performances for Local Athletes," Item #2 of IDS filed 04/08/2006, Page 1).

However, the AAPA does not specifically disclose the master controller capable of making the stored data available to a second kiosk controller.

Butler discloses that the storage and retrieval system can include online databases, wherein a program accesses a treatment record database including information regarding the history of a patient and procedures.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the master controller capable of making the stored data available to a second kiosk controller, thereby providing a second kiosk, or any kiosk, access to the online database holding stored data, permitting the operator to find

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information regarding the patient or treatment profile. Through using the Internet or any other network, data is able to be shared easily and not confined to a local kiosk.

Re Claim 24: Note that claim 24 includes limitations of making available to a user the system of claim 10, and allowing the user to pay for a session in the system via an entry of payment information relating to the user into the kiosk controller.

The AAPA inherently discloses making a system for cyclic variations in altitude conditioning available to a user.

However, it is not specifically disclosed how the user of the system pays for services.

Examiner takes OFFICIAL NOTICE that it is well known in the art to provide payment methods to a system through a controlling kiosk or on the system through bill receptors, change receptors, magnetic strips, smart cards, radio frequency, keypad entry of identification, keypad entry of credit information, etc.

Re Claim 25: The AAPA does not specifically disclose downloading data from the kiosk controller to the master controller, wherein the data relates to the user and was previously entered and stored on the kiosk controller.

Butler discloses that the controllers form a storage and retrieval system, including local and remote systems, for storing and retrieving information relating to the user (Paragraphs 120-122).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to download data to the master controller, creating a centralized database of user information.

Re Claim 26: The limitations of claim 26 have been discussed with regard to claim 21.

Re Claims 27-28: The limitations of claims 27-28 have been discussed with regard to claim 23 above.

Re Claim 29: The AAPA discloses requiring a user to successfully complete a set up program in order to ensure that the user is capable of safely completing a regular session of cyclic variations in altitude conditioning ("Introducing the CVAC Process: How to Get Started", Item #5 of IDS filed 12/10/2003).

Re Claim 30: The AAPA does not specifically disclose accessing data related to a user from the kiosk controller or master controller in order to determine a suitable program for the user based upon the user's history of use.

Butler discloses accessing data related to a user from the kiosk controller or master controller to determine a suitable program for the user based on the user's history of use (Paragraph 121).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to access data related to a user's history to determine a suitable program for the user, thereby determining and providing the most effective program adapted specifically for the user.

Re Claims 31-33: The limitations of claims 31-33 have been discussed above with regard to claims 3-5.

Re Claims 34-35: The limitation of enabling the user to successfully complete a set-up session in a pressure vessel has been discussed with regard to claim 29. The limitation of enabling the user to undergo rapid transitions between simulated altitude in the pressure vessel according to cycles determined by a program are disclosed by the AAPA (CVAC). The limitation of using a user sensor to measure a parameter of the user's body condition and selecting or altering the program based on the measured parameter has been discussed with regard to at least claims 7-9.

The AAPA additionally discloses that the cyclic variation in altitude conditioning program is tailored to an individual's body type ("Introducing CVAC: What is CVAC", Item #4 of IDS filed 12/10/2003).

However, the AAPA does not specifically disclose body type categories and selecting a program based on the category.

Butler discloses that programs are designed to be specific to certain treatment profiles, based on the user's data (Paragraphs 121-122).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to classify users into categories (profiles) such that specific treatments based on the user's data can be safely used.

Re Claims 36-39: The limitations of providing payment on the on-board interface or kiosk have been discussed above with regard to claim 24.

4. Claims 2-5 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the AAPA in view of Butler, as applied to claims 1 and 6-10 above, and further in view of Galerne (US Patent No. 4,227,524).

Re Claims 2-5: Claims 2-5 include an on-board interface and user sensor performing the limitations of claims 6-9, already discussed above, wherein the on-board interface of claims 2-5 essentially replace the external controller of claims 6-9.

The AAPA discloses an on-board interface (Applicant's Remarks, 03/03/2008, Page 12).

However, the AAPA does not specifically disclose the on-board interface selecting and altering the cyclic variations in altitude conditioning program.

Galerie discloses a pressure chamber system wherein controls for regulating the system may be placed inside and outside the vessel (Col. 16, Lines 36-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the on-board interface be capable of monitoring readings

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from the user sensor to determine whether a measured parameter of a user's body condition is at a level sufficient enough to warrant a modification of a predetermined program regulating cyclic variations in altitude conditioning, thereby achieving the predictable result of providing a user of the system control of the system while using the system.

Re Claims 11-14: Note that claims 11-14, dependent on claim 10, include limitations found in claims 2-5, dependent on claim 1, each of which have been discussed above.

Response to Arguments

5. Applicant's arguments, see pages 12-13 entitled "*II. Rejection of claims 1-39 under 35 USC §102 and the request for information under 37 CFR 1.105*", filed 12/30/2008, with respect to CLAIMS 1-39 have been fully considered and are persuasive. The 35 U.S.C. 102(b) rejections of claims 1-39 has been withdrawn.

Specifically, the available evidence fails to satisfy the requirements for 35 U.S.C. 102(b) since the device in use did not contain the user sensor of the currently claimed invention.

6. The declaration filed on 12/30/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Butler (US Publication 2004/0261796) reference.

Applicant's submission entitled "CVAC Innovations Planned" dated 05/30/2003, provides sufficient evidence to support the claim of conception of the claimed invention prior to Butler, with the interactive control panel/screen, and the sensor being evidenced

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as being part of the conceived invention. The applicant, however, fails to provide adequate evidence to substantiate a claim of diligence from the given date (05/30/2003) to an actual or constructive reduction to practice. The applicant has furnished metadata files; however, there is no way to ascertain the exact content of the files. Further these files carry dates in July of 2003, the time period from the date of conception until this date remains unaccounted for, as does the period following the date of these documents to the constructive reduction to practice. For these reasons, the declaration has been held to be ineffective in overcoming the Butler reference.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY-DARYL FLETCHER whose telephone number is

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(571)270-5054. The examiner can normally be reached on Monday to Friday 9:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/
Primary Examiner, Art Unit 3715

/J.D.F./
Examiner, Art Unit 3715